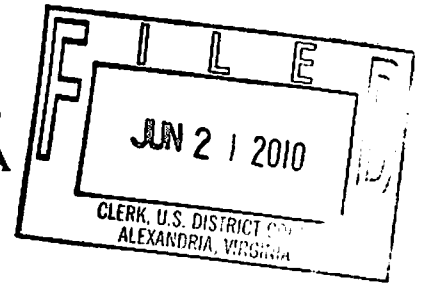


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA



**PEPCO ENERGY SERVICES, INC.**  
**1300 North 17<sup>th</sup> Street, Suite 1600**  
**Arlington, VA 22209**

**Plaintiff,**

**v.**

**TRIUMPH APPAREL CORP.**  
**(formerly DANSKIN, INC.)**  
**305 N State Street**  
**York, PA 17403**

**Serve: Corporation Service Company**  
**2711 Centerville Rd., Suite 400**  
**Wilmington, DE 19808**

**Defendant.**

CIVIL NO.: *1:10cv699 AJT/TCB*

**COMPLAINT**

COMES NOW, Plaintiff Pepco Energy Services, Inc., by and through its attorneys, and hereby files its Complaint against the Defendant Triumph Apparel Corp. (formerly Danskin, Inc.), and alleges as follows:

**I. Parties**

1. Plaintiff Pepco Energy Services, Inc. ("PES"), is a corporation organized under the laws of Delaware, with its principal place of business located at 1300 North 17<sup>th</sup> Street, Suite 1600, Arlington, Virginia.
2. Upon information and belief, Defendant Triumph Apparel Corp. ("Danskin") is a corporation with its distribution center located at 305 N. State Street, York, Pennsylvania and its corporate headquarters located in New York, New York.

## **II. Jurisdiction and Venue**

3. Plaintiff adopts and incorporates herein by reference paragraphs one (1) through two (2) as if set forth in their entirety in this section.
4. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §1332(a) (diversity of citizenship) and the amount in controversy, exclusive of interest and costs, is in excess of Seventy-five Thousand Dollars (\$75,000.00).
5. Plaintiff maintains its principal place of business in Arlington, Virginia, and Defendant contracted for the services of a company based in Virginia, had direct contacts by phone, facsimile and email with Plaintiff in Virginia and sent payments for services rendered to Plaintiff in Virginia. Therefore, Defendant is properly subject to the jurisdiction of this Court.
6. Venue is proper in this District pursuant to 28 U.S.C. § 1391. Venue for this action lies in Virginia, where the Plaintiff's business is located, service to the Defendant is coordinated, and where many witnesses and documents are located.

## **III. Statement of Facts**

7. Plaintiff adopts and incorporates herein by reference paragraphs one (1) through six (6) as if set forth in their entirety in this section.
8. Plaintiff is in the business of selling and supplying natural gas services.
9. Defendant is in the business of manufacturing and distribution of womens and girls active apparel and is in need of natural gas.

10. Plaintiff and Defendant are parties to a Base Natural Gas Sales Agreement dated April 1, 2002 (the "Agreement"), with Exhibit dated July 7, 2008, which provided for fixed rates for natural gas services on two (2) accounts for the period from August 1, 2008 through October 31, 2009, and contained a firm obligation on both parties to deliver and to receive 100% of Defendant's daily natural gas requirements during that period. *See Exhibit 1.*
11. This is a claim for breach of contract arising from the Defendant's failure to pay for the natural gas supplied by the Plaintiff.
12. By July 28, 2009, Defendant was \$288,114.60 in arrears. On that date, Plaintiff issued a written notice to Defendant demanding payment on all amounts in arrears. Defendant failed to respond.
13. On July 31, 2009, Plaintiff suspended further deliveries and terminated service pursuant to Section 13 of the Agreement.
14. In addition, as a result of Defendant's breach of the Agreement, Plaintiff was forced to resell the unused natural gas supply procured to fulfill its contractual obligations to Defendant, incurring damages in the amount of \$46,759.20 pursuant to Section 8 of the Agreement.
15. On October 13, 2009, Plaintiff engaged outside counsel to make a final demand for payment of both the arrearages and its additional damages resulting from the resale of unused supply, with a payment deadline of October 27, 2009. Defendant did not respond.
16. As of the date of this filing, Defendant has an unpaid balance for services rendered (including accrued late payment penalties) of \$398,832.49 plus additional compensatory damages from the resale of the unused gas supply of \$46,759.20.

**COUNT I**  
**(BREACH OF CONTRACT)**

17. Plaintiff adopts and incorporates herein by reference paragraphs one (1) through sixteen (16) as if set forth in their entirety in this count.
18. Defendant Danskin, pursuant to the Agreement between Defendant and the Plaintiff PES, had a contractual obligation to pay the total amount due as shown on the monthly billings by the 25<sup>th</sup> of each month or within 10 days of each billing statement, whichever is later.
19. Defendant breached its contract with Plaintiff by failing to meet the above stated contractual obligation, leading to a termination of service.
20. As a result of Defendant's breach of the Agreement, the Plaintiff has incurred compensatory damages of \$398,832.49 in unpaid natural gas bills plus accrued late payment penalties.
21. As a result of the breach, Plaintiff also was forced to resell the unused gas supply procured to fulfill its remaining contractual obligations to Defendant. Accordingly, pursuant to Section 8 of the Agreement, Defendant also is liable to Plaintiff for additional compensatory damages in the amount of \$46,759.20.

WHEREFORE, Plaintiff Pepco Energy Services, Inc. demands judgment from Defendant Triumph Apparel Corporation (formerly Danskin, Inc.) in the amount of \$445,591.69 in compensatory damages (including accrued interest penalties through the date of this filing), plus additional interest (which continues to accrue under the terms of the Agreement until all arrearages are satisfied), the costs of this action, and such other relief as this Court deems just and proper.

Respectfully submitted,

PEPCO ENERGY SERVICES, INC.

By counsel:

DeCARO, DORAN, SICILIANO,  
GALLAGHER & DeBLASIS, LLP

A handwritten signature in black ink, appearing to read 'J R' followed by a stylized flourish.

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